

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries)	CC Docket No. 02-6
Universal Service Support Mechanism)	
)	
Request for Review and/or Waiver)	
By Education Networks of America)	Application Nos. 909203, 909564,
of Funding Decisions by the)	909724, 950332, and 998054
Universal Service Administrative Company)	

**CONSOLIDATED REQUEST FOR REVIEW AND/OR WAIVER
BY EDUCATION NETWORKS OF AMERICA
OF FUNDING DECISIONS BY THE
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY**

Pursuant to sections 54.719 and 54.722 of the Commission's rules,¹ Education Networks of America, Inc. and ENA Services, LLC (collectively, ENA) hereby respectfully requests a review of the Universal Service Administrative Company (USAC) decisions to deny Schools and Libraries Universal Service funding to the Shelby County (Tennessee) School District (Shelby County) for Funding Years 2013, 2014 and 2015.² As a result of USAC's decisions, Shelby County schools face the denial of approximately \$14.5 million in E-rate reimbursement for services that ENA provided to them pursuant to a competitively bid, valid contract for broadband and telecommunications services.³

¹ 47 C.F.R. § 54.719(b), (c); 47 C.F.R. § 54.722(a).

² See Exhibit 1 for copies of the funding commitment decision letters USAC sent Shelby County for funding years 2013, 2014, and 2015.

³ *Id.*

For the reasons set forth below, the Federal Communications Commission (the Commission) or the Wireline Competition Bureau (the Bureau) should grant this appeal, and/or any waivers necessary or warranted, and remand the relevant applications to USAC for immediate approval. In addition, because Shelby County is a member of the Sweetwater Consortium, most of the issues in the instant appeal⁴ are effectively being considered by the Bureau already in its review of the Sweetwater Consortium's appeal.⁵ Accordingly, ENA respectfully suggests that the filing of the instant appeal in no way requires a delay in the Bureau's consideration of the Sweetwater appeal.⁶

⁴ As we will explain, there is a significant, additional relevant fact for Shelby County. Shelby County was also a member of the Metro Nashville Public Schools consortium, and therefore the MNPS procurement is also available for it to use to purchase ENA services. *See infra* pp. 17-18.

⁵ Consolidated Request for Review and/or Waiver by Sweetwater City Schools et al. of Funding Decisions by the Universal Service Administrative Company, CC Docket No. 02-6 (filed May 9, 2016) (Sweetwater Appeal); Consolidated Request for Review and/or Waiver by Education Networks of America of Funding Decisions by the Universal Service Administrative Company, CC Docket No. 02-6 (filed May 13, 2016) (ENA Appeal). We hereby incorporate by reference all of the facts and arguments contained in those appeals.

⁶ If it is administratively efficient, the Bureau could include a decision for Shelby County in the order resolving the Sweetwater Consortium. If, however, the Bureau did not have enough time to review and include Shelby County in a grant of the Sweetwater Consortium appeal, the Bureau could issue a grant for this Shelby County appeal in a streamlined Public Notice if the Bureau grants the Sweetwater appeal. *Streamlined Process for Resolving Requests for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60, 06-122, 08-71, 10-90, 11-42, and 14-58, Public Notice, 29 FCC Rcd 11094 (Wireline Comp. Bur. 2014). If the Bureau denies the Sweetwater appeal, it would need to address the Shelby-specific issues raised herein. Regardless, the filing of this appeal should not delay the issuance of a decision for the Sweetwater Consortium.

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EXECUTIVE SUMMARY

ENA respectfully requests that the Commission grant this appeal of decisions USAC made to deny E-rate funding for Shelby County.⁷ The Commission should grant this appeal and/or waive any relevant rules for several reasons. First, Shelby County, as a member of the Sweetwater Consortium, complied with the E-rate program rules, including using price as a primary factor in its bid evaluation process. USAC has not provided any evidence to show the competitive bidding process was flawed, except to arbitrarily second-guess the reviewing panel's grading of the individual RFP responses without providing any specific analysis. USAC's denial effectively substituting USAC's judgment – three years into the performance of the contract – for the judgment of those who would use and pay for those services.

Contrary to USAC's determination, ENA's bid was cost-effective considering both price and service quality. It provided the best value for Shelby County and the other members of the Sweetwater Consortium, as demonstrated by the fact that ENA received the most points in the bid evaluation, including the most points for non-price factors. In addition, ENA's pricing was cost-effective because it was comparable to current market rates, including AT&T's contract with the state of Tennessee and with AT&T's bid to the Sweetwater schools. AT&T's Sweetwater bid stated that the prices being offered were those from the Tennessee state master contract – and those prices actually totaled more than *\$11 million*, which was \$2 million more than ENA's bid, not even including AT&T's unknown installation charges. Even without regard to pricing (for which AT&T was awarded maximum points), ENA was judged by three

⁷ ENA is an aggrieved party pursuant to 47 C.F.R. § 719 because USAC's decision that ENA, as the service provider for Shelby County, provided services that were not cost-effective harms ENA's reputation and standing in the educational community and could hamper its ability to win competitive bidding processes in the future. ENA's service provider identification numbers for the E-rate program are 143008159 and 143030857.

evaluators, each bring complementary expertise to the lengthy evaluation process, to be the most cost-effective provider.

Second, ENA and the members of the Sweetwater Consortium, including Shelby County, had a valid contract under Tennessee law, and the parties performed in funding years 2013, 2014 and 2015 in accordance with that contract. USAC gave no legitimate explanation for disturbing that contract.

Importantly, and unique to Shelby County, Shelby County was also a member of the Metro Nashville Public Schools (MNPS) consortium during the three funding years in question and could therefore have taken service from ENA under the MNPS procurement instead of the Sweetwater procurement had it chosen to do so. This is all the more reason why USAC's denial of funding to Shelby County was unjustifiable: if it found fault with the Sweetwater procurement, USAC could have allowed Shelby County to replace the Form 470 number it submitted with the MNPS procurement, because USAC routinely allows applicants to substitute alternate Form 470 numbers after their applications have been filed. Shelby County used the Sweetwater Form 470 for three years because it had no indication from USAC there were any issues with the Sweetwater procurement. If USAC had identified whatever issues it had with the Sweetwater Consortium within the first year of the procurement, Shelby County – along with the other members of the Sweetwater Consortium – could have rebid for the services.

To this day, however, the members of the Sweetwater Consortium do not know what they could have done differently to satisfy USAC that the services the Consortium selected were cost-effective. Shelby County has been denied funding by USAC without citation to any relevant precedent. USAC's willingness to second-guess a thorough and detailed procurement process to deny funding negates the hard work of those who contracted for, and purchased, the services, and

who are now exposed to more than \$14 million of contractual liability without notice or precedent to alert them to this risk.

I. BACKGROUND

The Shelby County School District comprises Memphis and surrounding areas. It is the largest public school district in Tennessee and the 22nd largest public school district in the United States. More than 100,000 students are enrolled in Shelby County schools.⁸ Nearly all of Shelby County's schools are Title I schools and a large number of the district's schools have more than 90 percent economically disadvantaged student population.⁹

Education Networks of America is the leading provider of Infrastructure as a Service (IaaS) solutions to K-12 schools, high education institutions, and libraries. Since 1996, we have worked with our customers to ensure they have the robust and reliable high-capacity broadband, Wi-Fi/LAN, communication, and cloud solutions they require to meet the present and emerging technology needs of the communities they serve. ENA has been involved in the E-rate program since its inception and has nearly two decades of successful experience, working with a diverse group of schools and libraries, including rural and urban, large and small, system-wide and statewide, and supporting every type of demographic. Today, ENA manages numerous system-wide and statewide contracts, including 16 of the largest school systems in the country, successfully serving approximately 5,000 end sites; more than 550 school districts; more than 3.5 million students and staff; about 320 libraries; and more than 4.5 million library patrons.

⁸ <http://www.scsk12.org/about/>. See Supplement to Letter of Appeal filed by Rodney G. Moore, General Counsel and Chief Legal Officer, Shelby County Schools, with Schools and Libraries Division, USAC at 3 (May 9, 2016) (Shelby Letter of Appeal to USAC).

⁹ During the 2012-2013 school year, the economically disadvantaged population was 84.3 percent. Shelby Letter of Appeal to USAC at 3.

As noted in Sweetwater's Request for Review, on January 29, 2013, the Sweetwater Consortium sought bids on behalf of 76 local education agencies (LEAs)¹⁰ located in Tennessee."¹¹ Shelby County was the largest school district in the Consortium. ENA provided a bid response dated March 1, 2013, the due date of the RFP.¹²

ENA was the current provider for most of the schools participating in the Sweetwater Consortium when Sweetwater solicited bids for telecommunications and broadband services in 2013.¹³ After analyzing all available options for cost-effective service, ENA selected and had contracted with and coordinated with more than 40 vendors to deliver these services.¹⁴ In some cases, ENA selected an existing circuit and, in others, ENA worked with those service providers to build fiber to the school buildings.¹⁵ In many cases, ENA was able to contract with a local provider that lacked the capacity to bid for a statewide contract but owned dark fiber that could

¹⁰ "Local Education Agency" is a defined term in the Tennessee Code that includes all forms of schools systems. T.C.A. §49-1-103(2) provides: "Local education agency (LEA)," "school system," "public school system," "local school system," "school district," or "local school district" means any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly.

¹¹ Sweetwater Appeal, Exhibit 3, Sweetwater City Schools Request for Proposal, Number 13-1, Managed Internet Access, Voice-Over-IP and Video Conferencing at 5 (Jan. 29, 2013) (Sweetwater RFP).

¹² Sweetwater Appeal, Exhibit 7, ENA Bid Response.

¹³ ENA Appeal, Miller Aff. ¶ 11.

¹⁴ *Id.* No single facilities-based transport provider can deliver fiber-optic connections statewide in Tennessee. ENA, however, is not simply reselling other vendors' circuits. Instead, ENA, free to pick the best solution for each individual school, has designed its own network solutions to assure the most cost-effective solution. ENA Appeal, Miller Aff. ¶ 4.

¹⁵ *Id.*

be accessed.¹⁶ To try to provide the lowest price for its bid, ENA had an economic incentive to select the lowest cost but highest-quality solution for each of the circuits it needed.¹⁷

In contrast, AT&T appears to prefer the use of its own circuits to provide service,¹⁸ despite the fact that it does not have facilities in much of Tennessee outside of the urban areas.¹⁹ As such, to provide service to a new customer, or when it does not have the facilities to provide the requested level of service for that customer, AT&T must decide whether to design, engineer, and construct its own facilities.²⁰ In many cases – if not all cases – such an approach will be more expensive for the school districts because they will have to pay special construction costs upfront²¹ or those costs will need to be amortized over the life of the contract.²² As a result, AT&T may refuse to make the capital investment to deliver services, as it has done repeatedly in Tennessee.

ENA did not have any expectation that it would win the bid unless it provided the best, most cost-effective offering for every school in the Consortium.²³ ENA knew AT&T would also submit a bid.²⁴ ENA worked extremely hard to respond to the Sweetwater bid including

¹⁶ *Id.*

¹⁷ *Id.* ¶¶ 6, 11.

¹⁸ AT&T prefers to use its own circuits even when they are inadequate to the school's needs. Sweetwater Appeal, Affidavit of Melanie Miller, ¶ 13(e).

¹⁹ ENA Appeal, Miller Aff. ¶ 12. ENA is aware of many situations in which AT&T refused to install the circuits required because the school was located outside of AT&T's service area. *Id.* See http://www.aeneas.com/admin/FileUploads/EditorImages_38.pdf for the incumbent telephone companies' service areas.

²⁰ ENA Appeal, Miller Aff. ¶ 12.

²¹ AT&T's bid response expressly states that its installation costs will be billed separately. Sweetwater Appeal, Exhibit 6, AT&T Response, Tab III at 1.

²² ENA Appeal, Miller Aff. ¶ 12.

²³ *Id.* ¶ 13.

²⁴ *Id.*

significant time invested in engineering, design, operations, project management/project planning, pricing/finance and executive level review to develop the comprehensive response to the Sweetwater bid.²⁵ ENA spent approximately 250 hours preparing its bid response.²⁶

At part of its bid response, ENA signed the form contract that Sweetwater included in the RFP.²⁷ In the alternative, ENA offered to use the form of ENA's existing contract with MNPS to memorialize the parties' contract as it was familiar to, and therefore easier to use by the parties.²⁸ These form contracts – with their boilerplate terms and conditions – incorporated ENA's responses to the RFPs as the operative provisions that defined duties and pricing.²⁹ To use the boilerplate of the MNPS contract instead of using a new form would mean one fewer piece of paperwork, and thus would reduce the burden on the districts. ENA learned that it had won the bid on March 1, 2013,³⁰ thereby obligating ENA to perform the "offer" of its response to the RFP without regard to which of the two form contracts offered to Sweetwater was chosen. Sweetwater elected to use the form of the MNPS contract to memorialize the contract that was formed with the award on March 1, 2013.

Pursuant to the contract between ENA and Sweetwater, Shelby County ordered voice services, telecommunications services, and Internet access from ENA for which E-rate funding was requested. In accordance with its contractual obligation, ENA has performed under the

²⁵ *Id.*

²⁶ *Id.* ¶ 14.

²⁷ ENA Bid Response at 11, 146. Sweetwater Appeal, Exhibit 7. The form contracts each contain boilerplate standard terms and conditions that apply generally to all procurements, and each specifically incorporate the winning response to commemorate the duties and obligations of each party to the contract. *See, e.g.*, Sweetwater Appeal, Exhibit 3, Sweetwater RFP at Attachment E.

²⁸ Sweetwater Appeal, Exhibit 7, ENA Bid Response at 11, 146. *See also* R. Miller Aff. ¶ 15.

²⁹ *See* Sweetwater RFP at 28, Sweetwater Appeal Exhibit 3.

³⁰ Sweetwater Appeal, Exhibit 8.

contract by delivering telecommunications and broadband services for Shelby County, and Shelby County has paid ENA for the services.³¹ Shelby County filed applications for E-rate funding pursuant to Commission rules for funding years 2013, 2014 and 2015.³²

On March 15, 2016, USAC denied requests for approximately \$14.5 million in funding for Shelby County for funding years 2013, 2014, and 2015.³³ On April 29, 2016, Shelby County and ENA both appealed USAC's denials of Shelby County's applications, pursuant to Commission rules.³⁴ USAC denied ENA's appeal on August 26, 2016.³⁵ ENA herein timely files its request for review and/or waiver with the Commission.³⁶

II. THE COMMISSION SHOULD PROMPTLY REVERSE USAC'S DECISION AND REMAND THE APPLICATIONS FOR COMMITMENT

ENA respectfully requests that the Commission grant this appeal of decisions USAC made to deny and seek recovery of E-rate funding from Shelby County. USAC took three years to deny Shelby County's funding requests, and Shelby County is struggling financially as a result.

Because the issues in this appeal are identical to those in the Sweetwater appeal (with one additional matter, as explained below), the Commission already has before it all of the relevant facts and legal arguments in support of this appeal. Accordingly, we will briefly explain the key

³¹ ENA Appeal, Miller Aff. ¶ 17.

³² See Sweetwater Appeal, Exhibit 1.

³³ See Exhibit 1.

³⁴ Letter of Appeal from Education Networks of America to Universal Service Administrative Company (Apr. 29, 2016); 47 C.F.R. § 54.719(a).

³⁵ See Exhibit 2, Administrator's Decision on Appeal, Letter to Robert Patterson, Bradley Arant Bould Cummings LLP, from Schools and Libraries Division, USAC (Aug. 26, 2016) (Appeal Denial Letter). As of October 21, 2016, Shelby County had not received a denial of its appeal.

³⁶ 47 C.F.R. § 54.719(b), (c); 47 C.F.R. § 54.722(a).

arguments that support this appeal, with citations to the Sweetwater Consortium's appeal to the Commission, as well as ENA's appeal of USAC's Sweetwater denials, where appropriate.

As we have noted, if it is administratively efficient, the Bureau could include a decision for Shelby County in an order granting the Sweetwater Consortium's appeal.³⁷ In any event, though, we emphasize that the filing of the instant appeal should in no way delay the Commission from granting the Sweetwater appeal, because the instant appeal puts forth no new legal arguments that would affect the outcome of the Sweetwater appeal.

A. USAC Erred When It Concluded That ENA's Was Not the Most Cost-Effective Bid

Contrary to USAC's conclusion, ENA's bid was the most cost-effective considering both price and service quality. It provided the best value for Shelby County and other members of the Sweetwater Consortium, as demonstrated by the fact that ENA's bid received the most points in the bid evaluation, including the most points for non-price factors. As Sweetwater and ENA have previously explained – both to USAC and to the Commission – USAC's conclusion that ENA's was not the most cost-effective bid is unsupportable for two main reasons.

First, for purposes of identifying the most cost-effective bid, *the Commission requires only that bid evaluators make price worth at least one point more than any other factor.*³⁸ The Sweetwater Consortium incontrovertibly complied with this requirement, as its bid evaluation awarded 25 points for price out of a total 100 possible points, while the next-highest factors were worth only 20 points.³⁹ USAC made no effort to demonstrate, and could not have demonstrated,

³⁷ If the Bureau denies the Sweetwater appeal, however, it will need to address the Shelby-specific issues raised herein.

³⁸ See Sweetwater Appeal at 41.

³⁹ See *id.* at 41.

that the Sweetwater Consortium failed to give price the consideration that the Commission requires.

Second, despite the shortcomings of AT&T's bid that Sweetwater described in its appeal, *Sweetwater's bid evaluators gave AT&T the full 25 points for price.*⁴⁰ In other words, Sweetwater gave AT&T credit for being the lowest-priced bid in order to ensure that it was treating AT&T fairly. Accordingly, it makes no difference whether Sweetwater's concerns about the pricing language in AT&T's bid were reasonable or not, because AT&T was not penalized for the glaring lack of clarity in its response and received the highest possible pricing score.⁴¹ It is unclear why USAC did not take this fact into account in its denial, but we emphasize to the Commission that even if Sweetwater had been mistaken about the pricing language in AT&T's bid, the mistake had no bearing on the outcome of the selection process. Sweetwater gave AT&T the benefit of the doubt and gave it the highest marks for pricing, and ENA still won.

As explained in detail in the Sweetwater appeal, the *Tennessee* order provided that USAC and the FCC should defer to the local competitive bidding process.⁴² In *Tennessee*, the Commission found that a school or library applicant could *itself* determine whether services were cost-effective based upon price and other factors.⁴³ Further, the Commission noted that USAC generally does not need to independently make a finding of cost-effectiveness because it can rely upon the local procurement process and the Commission's requirement that a school or library must pay its share of the costs of eligible services ensures that the services selected are the most

⁴⁰ *See id.* at 23.

⁴¹ Of course, Sweetwater demonstrated in its appeal that its concerns about AT&T's pricing were eminently reasonable. *See Sweetwater Appeal* at 23-27.

⁴² *See Sweetwater Appeal* at 16-17.

⁴³ *Tennessee Order* at ¶ 10.

cost-effective.⁴⁴ This deference, identified in the *Tennessee* order, then, has established a rebuttal presumption in favor of a local procurement process that otherwise complies with Commission requirements that can only be rebutted by proof of “waste, fraud or abuse.” Any other standard creates so much uncertainty in the procurement process that no district could ever rely upon its competitive bidding process to ensure E-rate funding.

In substituting its own judgment of what the Sweetwater Consortium members needed from their service provider for the judgment of the Consortium itself, USAC leaves ENA, and indeed every school and every vendor wondering what the Sweetwater Consortium could have done differently in its bidding process. At the end of its nine-hour bid review process – diligently conducted by three evaluators with complementary competencies and after which ENA earned the most total points under the criteria established in the RFP – was the Consortium supposed to look at the results of the process, and, ignoring the criteria and point schedule it had developed and announced in the RFP, instead select AT&T as the winner of the bid simply based on price?⁴⁵ If it had done so, USAC could have found that the Consortium did not follow the process it had announced in the RFP and had failed to choose the most cost-effective bidder, and denied funding on those grounds instead.⁴⁶ It is unclear what standard USAC used to conclude that ENA’s bid was not cost-effective. It appears as if USAC has denied the funding solely

⁴⁴ *Tennessee Order* at ¶ 10.

⁴⁵ It is also still true that AT&T did not, in fact, offer a lower price than ENA, nor did it include all of the applicable charges in its bid.

⁴⁶ Denying an award to a bidder who objectively won the most points in a thorough and competent procurement process would most certainly provoke a bid protest and possibly litigation. Needless to say, the district would be challenged to defend those proceedings on these facts.

because it thought ENA's bid was higher, which – even if that were accurate – is not and never has been against Commission rules.⁴⁷

USAC noted that its review of the bids found the services offered by both of providers “contain similar Network infrastructure, similar Network Support, similar On Premise Network Equipment, similar Monitoring Service, both have similar experience and operate in Tennessee, both have extensive experience with the e-rate program, and both service providers provided references from past customers who were satisfied with the service providers.”⁴⁸ In other words, USAC decided – three years after Sweetwater conducted its bid evaluation process – to ignore the actual bids submitted, the evaluation by the actual users of those services, and the corresponding points to be awarded as detailed in the RFP and pursuant to a careful and comprehensive review process, and to substitute its own *belief* that AT&T and ENA should have received the same points for the non-price categories. That decision was not based on facts and should not replace the judgment of three school officials in Tennessee who have extensive experience with technology, procurements, and Tennessee service providers.

The impact on this industry cannot be understated. USAC's willingness to subjectively second-guess a procurement process that conformed with all known standards robs applicants

⁴⁷ *Federal State Joint Board on Universal Service* (CC Docket No. 96-45); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge* (CC Docket Nos. 96-262, 94-1, 91-213, 95-72), Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5429 at ¶ 192 (1997); see, e.g., *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc., of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734, 13740 at ¶ 7 (1999) (*Tennessee Order*).

⁴⁸ See Sweetwater Appeal, Exhibit 13, p. 5.

and vendors of any confidence in the program's processes. The result undermines the statutory purposes of the E-rate program.

In summary, the Consortium complied with the E-rate program competitive bidding rules, including using price as a primary factor in its bid evaluation process. USAC provided no analysis to show that Sweetwater's competitive bidding process was flawed; it only second-guessed the outcome.⁴⁹ As demonstrated above and by the Sweetwater Consortium in its appeal, USAC failed to take into account the legitimate differences between the two bids Sweetwater considered. Not only did USAC exceed its authority by interpreting Commission rules, it also acted arbitrarily when it decided to substitute its judgment for the Consortium's.⁵⁰

B. The Sweetwater Consortium Had a Contract With ENA

As Sweetwater has also explained, under both Tennessee law and E-rate rules and precedent, the Consortium and ENA had a valid, written contract in place prior to when the Consortium members filed their FCC Forms 471. For the past three years, Shelby County and other Consortium members have been ordering, and ENA has been providing, E-rate eligible services. Yet USAC asserts that the parties do not have a valid contract, a position that is unfounded in the law.

⁴⁹ USAC appears to be ignoring Commission precedent finding that when school districts conduct a lawful competitive bidding process and the rates do not exceed market rates, the services selected are cost-effective. *Tennessee Order* at ¶¶ 9-10; *Requests for Review of Decisions of the Universal Service Administrator by Net56, Inc.*, CC Docket No. 02-6, Order, DA 12-1792 at ¶¶ 12-14 (WCB 2012).

⁵⁰ 47 C.F.R. § 54.702(c); *see also In re Incomnet, Inc.*, 463 F.3d 1064, 1072 (9th Cir. 2006) (quoting 47 C.F.R. § 54.702(c), USAC "is prohibiting from 'mak[ing] policy, interpret[ing] unclear provisions of the statute or rules, or interpret[ing] the intent of Congress" quoting 47 C.F.R. § 54.702(c).").

A contract is formed by the acceptance of an offer.⁵¹ ENA made an offer of services when it responded to the Consortium's RFP.⁵² The Consortium accepted that offer when it issued its award on March 1, 2013. As a consequence, a contract was formed pursuant to which ENA was obligated to provide services to all of the members of the Consortium. Of those members, forty-three (including Shelby County) ordered services, which ENA has provided for the last three years. While acceptance of an offer can be proven by performance, the facts are that the Consortium formally accepted ENA's offer with the award and the districts who ordered services under that contract have acknowledged their contractual responsibility to pay for those services.⁵³

ENA's proposal offered the Consortium alternative form documents to memorialize the contract. In its offer, ENA signed and returned the Consortium's proposed contract.⁵⁴ ENA also offered the "Metropolitan Nashville Public School (MNPS), MNPS2-225071-00" as an alternative form contract.⁵⁵ Both forms incorporated the bid response into standard, boilerplate terms and conditions, and specifically acknowledged the "Contractor's Bid/Proposal"⁵⁶ as the operative provisions of the contract. That option was offered as an administrative convenience

⁵¹ 7 Tenn. Juris. CONTRACTS § 16 (2015). A contract must result from a meeting of the minds of the parties in mutual assent to the terms, must be based upon a sufficient consideration, free from fraud or undue influence, not against public policy and sufficiently definite to be enforced. *Staubach Retail Services-Southeast, LLC v. H. G. Hill Realty Co.*, 160 S.W.3d 521 (Tenn. 2005).

⁵² ENA Response at 6, Sweetwater Appeal Exhibit 7 ("ENA is pleased to provide this Proposal Response to the Sweetwater City Schools (SC) RFP Number 13-1...."); *id.* at 11 ("ENA appreciates your consideration of our Proposal Response....").

⁵³ "Consideration exists when the promisee does something that it is under no legal obligation to do or refrains from doing something it has a legal right to do." 7 Tenn. Juris. CONTRACTS § 33 (2015).

⁵⁴ Sweetwater Appeal, Exhibit 7, ENA Bid Response at 146 ("ENA accepts all terms and conditions of the proposed contract without exceptions. A signed and notarized contract is included in this section.").

⁵⁵ Sweetwater Appeal, Exhibit 7, ENA Bid Response at 11, 118.

⁵⁶ Sweetwater Appeal, Exhibit 5, Sweetwater RFP at 28.

for the districts that had already obtained approval of the form of the MNPS contract. In effect, it saved those districts the additional administrative task of notifying a different school district of their intent to use the contract. Because of this administrative convenience, the Consortium chose the MNPS form to memorialize the contract. The Sweetwater Consortium did not “piggyback” off the MNPS contract. The Consortium conducted its own procurement, formed its own separate contract with ENA on March 1, 2013, and then used the form of the MNPS contract to memorialize the agreement between the parties.

In summary, the contract between ENA and the Sweetwater Consortium was valid under both Tennessee contract law and Commission rules and precedent. USAC had no legitimate basis for deciding otherwise.

C. Shelby County Could Have Taken the Same Service from ENA Under Another Procurement Process

As noted above, this appeal differs factually from the Sweetwater appeal in one respect: namely, that Shelby County was also a member of the Metro Nashville Public Schools (MNPS) consortium during the funding years in question. Shelby County should therefore be able to take services for these funding years using the Metro Nashville Public Schools procurement process.

In 2011, a consortium of 78 school districts in Tennessee conducted a competitive procurement for E-rate eligible services and awarded a five-year contract to ENA. The consortium was led by the Metro Nashville Public Schools. Shelby County was a member of that consortium and was listed on that FCC Form 470.⁵⁷

⁵⁷ See Form 470 534070000900066. In 2013, Shelby County merged with the Memphis school system to create one unified Shelby County School District. *See* http://blogs.edweek.org/edweek/District_Dossier/2014/06/memphis-shelby_county_merger_a.html.

Shelby County, like several other districts that participated in the Sweetwater procurement, also joined the Sweetwater Consortium, presumably to see if they could get a better price, even though they could have still used the existing MNPS procurement. Shelby County could therefore have taken service from ENA under the MNPS procurement, which was approved and fully funded by USAC, instead of the Sweetwater procurement, had it chosen to do so.⁵⁸ And if USAC had notified the Sweetwater Consortium members in a timely fashion, rather than three years after the fact, that it had found fault with the Sweetwater procurement process, Shelby County would undoubtedly have taken service from ENA under the MNPS procurement instead, and its funding for those three years would not now be in jeopardy.

This is all the more reason why USAC's denial of funding to Shelby County was unjustifiable. USAC routinely allows applicants to substitute Form 470 numbers after their applications have been filed. Rather than denying funding, then, USAC could have allowed Shelby County to replace the Form 470 number it submitted with the Form 470 for the MNPS procurement.

⁵⁸ The addition of the Memphis schools to the Shelby County district did not create a requirement that Shelby rebid for its E-rate services in 2013 in anticipation of its merger with Memphis. *See* <http://www.usac.org/sl/applicants/step01/default.aspx> ("However, if a multi-year contract results from the competitive bidding process, it is not necessary to post a new FCC Form 470 until a new contract is required.") Further, the scope of the MNPS Consortium procurement would not have been affected by the addition of the Memphis school sites. The FCC Form 470 noted that 78 LEAs (local educational agencies) were seeking bids for services; that was still accurate after the merger of Shelby and Memphis. *See* Form 470 534070000900066.

III. IN THE ALTERNATIVE, THE FCC SHOULD GRANT WHATEVER WAIVERS IT DEEMS NECESSARY SO THAT THESE SCHOOLS CAN RECEIVE E-RATE FUNDING

Shelby County did not violate any E-rate requirements for the applications at issue. If the Commission disagrees, however, ENA respectfully requests that the Commission grant whatever waiver it deems necessary to allow E-rate funding for Shelby County for funding years 2013, 2014 and 2015.⁵⁹ Even if the Commission agrees with USAC that the Sweetwater Consortium violated the E-rate rules in conducting its competitive bidding process and contracting for the services, a waiver of the Commission's rules is in the public interest.

Any of the Commission's rules may be waived if good cause is shown.⁶⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁶¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁶²

⁵⁹ The Commission has granted waivers for violations of these rules on numerous occasions. For "no contract" waivers, *see, e.g., Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, 23 FCC Rcd 15526 (Wireline Comp. Bur. 2008) (*Barberton City Order*); *Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Animas School District 6, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, 26 FCC Rcd 16903 (Wireline Comp. Bur. 2011); *Request for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Al Noor High School, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, 27 FCC Rcd 8223 (Wireline Comp. Bur. 2012). For competitive bidding waivers, *see, e.g., Application for Review of the Decisions of the Universal Service Administrator by Aberdeen School District*, CC Docket No. 02-6, Order, FCC 07-63, ¶ 9 (2007) ("We find that Petitioners' errors related to the competitive bidding process do not warrant a complete rejection of their applications. We have examined the facts of each of these appeals and found that a waiver is warranted based on the circumstances presented and based on the facts that there is no evidence of waste, fraud or abuse.") (*Aberdeen Order*).

⁶⁰ 47 C.F.R. § 1.3.

⁶¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁶² *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

A waiver of the Commission's rules is appropriate in Shelby County's case. First, the Commission has routinely granted waivers for its rule requiring that a signed contract be in place as long as there was a legally binding agreement.⁶³ There is no reason why the Commission should deviate from its precedent to reach a different result here. Second, there is no waste, fraud or abuse in this case.⁶⁴ Shelby County purchased the services, used them for their statutory purpose, and the students in their district received the benefit of them.

Third, in the absence of a waiver, the harm to the Shelby County schools would be significant. If Shelby County is denied the approximately \$14.5 million of full funding it requested for funding years 2013, 2014, and 2015, it will be forced to decrease future expenditures for advanced telecommunications and Internet access, and may have to cut other critical services to students because it has had to pay the full amount for the services it has already received. Shelby County details the harm to its students that its financial constraints have already imposed in its Letter of Appeal to USAC. Specifically, in 2015-2016, 367 positions were eliminated from the district, including teachers, social workers, guidance counselors, and reading intervention teachers.⁶⁵ In 2016-17, Shelby County faces a \$40 million budget gap.⁶⁶ The Commission's correction of this unwarranted denial of funds would lessen the dramatic effects of this shortfall.

⁶³ *First Modernization Order* at ¶ 203 (noting that the Commission "has consistently waived the requirement of a signed contract for petitioners who have demonstrated that they had a legally binding agreement in place for the relevant funding year").

⁶⁴ The Commission has repeatedly granted appeals or waived its rules when there was no waste, fraud or abuse. *See, e.g., Aberdeen Order* at ¶ 9; *Net56 Order* at ¶ 16.

⁶⁵ Shelby Letter of Appeal to USAC at 3.

⁶⁶ *Id.*

Finally, a waiver is appropriate because denying funding to Shelby County for the three years in question would be contrary to the public interest. In effect, allowing USAC's decision to stand would legitimize USAC's unfair and unexplained delay in issuing its findings on the Sweetwater procurement, a delay that greatly harmed Shelby County and the other Consortium members. If USAC had come to its conclusion – erroneous though it was – within the first funding year after the filing of the 2013 applications, Shelby County could have used the MPNS procurement rather than the Sweetwater procurement to take service from ENA. However, neither Shelby County nor the other Sweetwater Consortium members had any idea that their applications were in danger of rejection. USAC's delay resulted in the loss of more than \$14 million in funding for Shelby County alone, a loss that Shelby County could have avoided if USAC had made a timely decision. Shelby County and the other Consortium members should not have to bear the consequence of USAC's failure to timely act.

Finally, it would be contrary to program and statutory goals, which are to increase access to telecommunications and Internet access, to deny this funding. If the funding is denied, it is likely that technology or other essential services for years to come would be reduced for Shelby County. There is no program goal that would be furthered by denying these funds to the Shelby County. As ENA and the Sweetwater Consortium have previously shown, the prices offered by ENA were the lowest prices available in the market, and the most cost-effective services. As such, there was zero harm to the Universal Service Fund. To deny funding to Shelby County schools would undermine the very purpose for which the program was created.

IV. CONCLUSION

For the foregoing reasons, the Commission should grant ENA's request for appeal, or, in the alternative, its request for waiver. In addition, ENA requests that the Commission remand the applications at issue back to USAC for commitments as soon as practicable, consistent with the relief requested in this appeal, including any additional waivers of Commission rules necessary to effectuate the relief sought.

Respectfully submitted,

/s/ Gina Spade

Gina Spade
Broadband Legal Services
1629 K Street, NW Suite 300
Washington, DC
DC Bar # 452207
gina@broadbandlegal.com
202-907-6252

October 24, 2016

CERTIFICATE OF SERVICE

This is to certify that on this 24th day of October, a true and correct copy of the foregoing

Request for Review was sent via email to:

Schools and Libraries Division, Universal Service Administrative Company,
Appeals@sl.universalservice.org

/s/ Gina Spade

Exhibit 1

Funding Commitment Decision Letters



Universal Service Administrative Company

Schools and Libraries Division



FUNDING COMMITMENT DECISION LETTER
(Funding Year 2013: 07/01/2013 - 06/30/2014)

March 15, 2016

Rex Miller
ENA Services, LLC
618 Grassmere Park Drive
Suite 12
Nashville, TN 37211

Re: Service Provider Name: ENA Services, LLC
Service Provider Identification Number: 143030857

Thank you for participating in the Schools and Libraries Program (Program) for Funding Year 2013. This letter is your notification of our decision(s) regarding application funding requests that listed your company's Service Provider Identification Number (SPIN).

NEXT STEPS

- File FCC Form 498, Service Provider Information Form, if appropriate.
- File FCC Form 473, Service Provider Annual Certification Form (SPAC), for the above Funding Year.
- Work with your customer to provide appropriate invoicing to USAC - FCC Form 474, Service Provider Invoice (SPI) or Billed Entity Applicant Reimbursement (BEAR).

Please refer to the Funding Commitment Report(s) (Report) following this letter for specific funding request decisions and explanations. Each Report contains detailed information extracted from the applicant's FCC Form 471. A guide that provides a definition for each line of the Report is available in the Guide to USAC Letter Reports in the Reference Area of our website.

Once you have reviewed this letter, we urge you to contact your customers to establish any necessary arrangements regarding start of services, billing of discounts, and any other administrative details for implementation of discount services. As a reminder, only eligible services delivered in accordance with Federal Communications Commission (FCC) rules are eligible for these discounts.

TO APPEAL THIS DECISION:

If you wish to appeal a decision in this letter to USAC, your appeal must be received by USAC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the USAC decision letter (e.g., FCDL) and the decision you are appealing:
 - Appellant name,
 - Applicant or service provider name, if different from appellant,
 - Applicant Billed Entity Number (BEN) and SPIN,
 - FCC Form 471 Application Number and the Funding Request number (FRN) or numbers as assigned by USAC,
 - "Funding Commitment Decision Letter for Funding Year 2013," AND
 - The exact text or the decision that you are appealing.

Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-0685
Visit us online at: www.usac.org/sl

3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
4. If you are the applicant, please provide a copy of your appeal to the service provider(s) affected by the decision. If you are the service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

We strongly recommend that you use one of the electronic filing options. To submit your appeal to USAC by email, email to appeals@sl.universalservice.org or submit your appeal electronically by using the "Submit a Question" feature on the USAC website. USAC will automatically reply to incoming emails to confirm receipt.

To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
30 Lanidex Plaza West
PO Box 685
Parsippany, NJ 07054-0685

For more information on submitting an appeal to USAC, please see Appeals in the Schools and Libraries section of the USAC website.

OBLIGATION TO PAY NON-DISCOUNT PORTION

Applicants are required to pay the non-discount portion of the cost of the products and/or services to their service provider(s). Service providers are required to bill applicants for the non-discount portion. The FCC stated that requiring applicants to pay their share ensures efficiency and accountability in the program. If USAC is being billed via the FCC Form 474, the service provider must bill the applicant at the same time it bills USAC. If USAC is being billed via the FCC Form 472, the applicant pays the service provider in full (the non-discount plus discount portion) and then seeks reimbursement from USAC. If you are using a trade-in as part of your non-discount portion, please refer to Disposal or Trade-in of Equipment posted in the Reference Area of our website for more information.

NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

Schools and Libraries Division
Universal Service Administrative Company

FUNDING COMMITMENT REPORT
Service Provider Name: ENA Services, LLC
SPIN: 143030857
Funding Year: 2013

Name of Billed Entity: SHELBY COUNTY SCHOOL DISTRICT
Billed Entity Address: 160 S HOLLYWOOD ST
Billed Entity City: MEMPHIS
Billed Entity State: TN
Billed Entity Zip Code: 38112-4801
Billed Entity Number: 128440
Contact Person's Name: Eric V. Saunders
Preferred Mode of Contact: EMAIL
Contact Information: MCS-ERate@mcsk12.net
FCC Form 471 Application Number: 909203
Funding Request Number: 2498802
Funding Status: Not Funded
Category of Service: Internet Access
FCC Form 470 Application Number: 283390001111946
Contract Number: 2-225071-00
Billing Account Number: Shelby County Schools
Service Start Date: 07/01/2013
Contract Expiration Date: 06/30/2016
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: \$5,978,400.00
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$.00
Pre-Discount Amount: \$5,978,400.00
Applicant's Discount Percentage Approved by SLD: 77%
Funding Commitment Decision: \$.00 - Contract Violation
Funding Commitment Decision Explanation: DR1: This FRN is denied because you failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium (SCSDC) and ENA Services, LLC (ENA). The SCSDC provided a contract between Metropolitan Nashville Public Schools (MNPS) and ENA (Contract # 2-225071-00) that was signed and executed March 7, 2011. In their response, the SCSDC stated that the ENA costs proposed to the SCSDC were lower than the costs proposed in the previous consortium procurement with MNPS. SCSDC selected MNPS pricing instead of executing a contract with ENA. SCSDC has not demonstrated that there was a contract executed between SCSDC and ENA. Furthermore, there is no provision in the MNPS contract, or underlying RFP, that allows for the SCSDC to piggy-back onto that contract. In response to our Intent to Deny letter, SCSDC cited Tennessee Code Section 12-3-1203(b)(1)-(2) to support that a valid contract exists. Since this statute is limited to the purchase of equipment, the MNPS contract falls outside of the Tennessee Code parameters. Additionally, the dollar amount exceeds the statutory threshold. Accordingly, SCSDC failed to demonstrate that a valid contract is in place. <><><><><> DR2: SCSDC was afforded opportunities to justify the selection of ENA's bid proposal of \$9,336,396, which is over \$3 million more than AT&T's \$6,053,804.04 bid, as the most cost-effective solution. SCSDC stated that AT&T's bid had defects which had the cumulative effect of offsetting the value of a lower sticker price. SCSDC acknowledged that the price differential is significant but indicated ENA's service offering was unique and not comparable to AT&T. SCSDC also stated AT&T's bid excluded installation charges. A thorough review of each proposal shows that the services offered are similar. As a result, the circumstances presented do not justify the selection of ENA and it has been determined that SCSDC failed to adhere to the requirements of selecting the most cost-effective solution.

FCDL Date: 03/15/2016

Wave Number: 107

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2017

Consultant Name:

Consultant Registration Number (CRN):

Consultant Employer:

FUNDING COMMITMENT REPORT
Service Provider Name: ENA Services, LLC
SPIN: 143030857
Funding Year: 2013

Name of Billed Entity: SHELBY COUNTY SCHOOL DISTRICT
Billed Entity Address: 160 S HOLLYWOOD ST
Billed Entity City: MEMPHIS
Billed Entity State: TN
Billed Entity Zip Code: 38112-4801
Billed Entity Number: 128440
Contact Person's Name: Eric V. Saunders
Preferred Mode of Contact: EMAIL
Contact Information: MCS-ERate@mcsk12.net
FCC Form 471 Application Number: 909564
Funding Request Number: 2498932
Funding Status: Not Funded
Category of Service: Internet Access
FCC Form 470 Application Number: 283390001111946
Contract Number: 2-225071-00
Billing Account Number: Shelby County Schools
Service Start Date: 07/01/2013
Contract Expiration Date: 06/30/2016
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: \$598,819.20
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$.00
Pre-Discount Amount: \$598,819.20
Applicant's Discount Percentage Approved by SLD: 77%
Funding Commitment Decision: \$.00 - Contract Violation
Funding Commitment Decision Explanation: DR1: This FRN is denied because you failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium (SCSDC) and ENA Services, LLC (ENA). The SCSDC provided a contract between Metropolitan Nashville Public Schools (MNPS) and ENA (Contract # 2-225071-00) that was signed and executed March 7, 2011. In their response, the SCSDC stated that the ENA costs proposed to the SCSDC were lower than the costs proposed in the previous consortium procurement with MNPS. SCSDC selected MNPS pricing instead of executing a contract with ENA. SCSDC has not demonstrated that there was a contract executed between SCSDC and ENA. Furthermore, there is no provision in the MNPS contract, or underlying RFP, that allows for the SCSDC to piggy-back onto that contract. In response to our Intent to Deny letter, SCSDC cited Tennessee Code Section 12-3-1203(b)(1)-(2) to support that a valid contract exists. Since this statute is limited to the purchase of equipment, the MNPS contract falls outside of the Tennessee Code parameters. Additionally, the dollar amount exceeds the statutory threshold. Accordingly, SCSDC failed to demonstrate that a valid contract is in place. <><><><><> DR2: SCSDC was afforded opportunities to justify the selection of ENA's bid proposal of \$9,336,396, which is over \$3 million more than AT&T's \$6,053,804.04 bid, as the most cost-effective solution. SCSDC stated that AT&T's bid had defects which had the cumulative effect of offsetting the value of a lower sticker price. SCSDC acknowledged that the price differential is significant but indicated ENA's service offering was unique and not comparable to AT&T. SCSDC also stated AT&T's bid excluded installation charges. A thorough review of each proposal shows that the services offered are similar. As a result, the circumstances presented do not justify the selection of ENA and it has been determined that SCSDC failed to adhere to the requirements of selecting the most cost-effective solution.

FCDL Date: 03/15/2016

Wave Number: 107

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2017

Consultant Name:

Consultant Registration Number (CRN):

Consultant Employer:

FUNDING COMMITMENT REPORT
Service Provider Name: ENA Services, LLC
SPIN: 143030857
Funding Year: 2013

Name of Billed Entity: SHELBY COUNTY SCHOOL DISTRICT
Billed Entity Address: 160 S HOLLYWOOD ST
Billed Entity City: MEMPHIS
Billed Entity State: TN
Billed Entity Zip Code: 38112-4801
Billed Entity Number: 128440
Contact Person's Name: Eric V. Saunders
Preferred Mode of Contact: EMAIL
Contact Information: MCS-ERate@mcsk12.net
FCC Form 471 Application Number: 909724
Funding Request Number: 2477430
Funding Status: Not Funded
Category of Service: Telecommunications Service
FCC Form 470 Application Number: 283390001111946
Contract Number: 2-225071-00
Billing Account Number: Shelby County Schools
Service Start Date: 07/01/2013
Contract Expiration Date: 06/30/2016
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: \$3,900,915.72
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$.00
Pre-Discount Amount: \$3,900,915.72
Applicant's Discount Percentage Approved by SLD: 87%
Funding Commitment Decision: \$.00 - Contract Violation
Funding Commitment Decision Explanation: DR1: This FRN is denied because you failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium (SCSDC) and ENA Services, LLC (ENA). The SCSDC provided a contract between Metropolitan Nashville Public Schools (MNPS) and ENA (Contract # 2-225071-00) that was signed and executed March 7, 2011. In their response, the SCSDC stated that the ENA costs proposed to the SCSDC were lower than the costs proposed in the previous consortium procurement with MNPS. SCSDC selected MNPS pricing instead of executing a contract with ENA. SCSDC has not demonstrated that there was a contract executed between SCSDC and ENA. Furthermore, there is no provision in the MNPS contract, or underlying RFP, that allows for the SCSDC to piggy-back onto that contract. In response to our Intent to Deny letter, SCSDC cited Tennessee Code Section 12-3-1203(b)(1)-(2) to support that a valid contract exists. Since this statute is limited to the purchase of equipment, the MNPS contract falls outside of the Tennessee Code parameters. Additionally, the dollar amount exceeds the statutory threshold. Accordingly, SCSDC failed to demonstrate that a valid contract is in place. <><><><><> DR2: SCSDC was afforded opportunities to justify the selection of ENA's bid proposal of \$9,336,396, which is over \$3 million more than AT&T's \$6,053,804.04 bid, as the most cost-effective solution. SCSDC stated that AT&T's bid had defects which had the cumulative effect of offsetting the value of a lower sticker price. SCSDC acknowledged that the price differential is significant but indicated ENA's service offering was unique and not comparable to AT&T. SCSDC also stated AT&T's bid excluded installation charges. A thorough review of each proposal shows that the services offered are similar. As a result, the circumstances presented do not justify the selection of ENA and it has been determined that SCSDC failed to adhere to the requirements of selecting the most cost-effective solution.

FCDL Date: 03/15/2016

Wave Number: 107

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2017

Consultant Name:

Consultant Registration Number (CRN):

Consultant Employer:

FUNDING COMMITMENT REPORT
Service Provider Name: ENA Services, LLC
SPIN: 143030857
Funding Year: 2014

Name of Billed Entity: SHELBY COUNTY SCHOOL DISTRICT

Billed Entity Address: 160 S HOLLYWOOD AVE

Billed Entity City: MEMPHIS

Billed Entity State: TN

Billed Entity Zip Code: 38112-4801

Billed Entity Number: 128440

Contact Person's Name: Shawandra Ford

Preferred Mode of Contact: EMAIL

Contact Information: fordsl@scsk12.org

FCC Form 471 Application Number: 950332

Funding Request Number: 2705618

Funding Status: Not Funded

Category of Service: Telecommunications Service

FCC Form 470 Application Number: 283390001111946

Contract Number: 2-225071-00

Billing Account Number: N/A

Service Start Date: 07/01/2014

Contract Expiration Date: 06/30/2016

Number of Months Recurring Service Provided in Funding Year: 12

Annual Pre-Discount Amount for Eligible Recurring Charges: \$3,900,915.72

Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$.00

Pre-Discount Amount: \$3,900,915.72

Applicant's Discount Percentage Approved by SLD: 84%

Funding Commitment Decision: \$.00 - Contract Violation

Funding Commitment Decision Explanation: DR1: This FRN is denied because you failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium (SCSDC) and ENA Services, LLC (ENA). The SCSDC provided a contract between Metropolitan Nashville Public Schools (MNPS) and ENA (Contract # 2-225071-00) that was signed and executed March 7, 2011. In their response, the SCSDC stated that the ENA costs proposed to the SCSDC were lower than the costs proposed in the previous consortium procurement with MNPS. SCSDC selected MNPS pricing instead of executing a contract with ENA. SCSDC has not demonstrated that there was a contract executed between SCSDC and ENA. Furthermore, there is no provision in the MNPS contract, or underlying RFP, that allows for the SCSDC to piggy-back onto that contract. In response to our Intent to Deny letter, SCSDC cited Tennessee Code Section 12-3-1203(b)(1)-(2) to support that a valid contract exists. Since this statute is limited to the purchase of equipment, the MNPS contract falls outside of the Tennessee Code parameters. Additionally, the dollar amount exceeds the statutory threshold. Accordingly, SCSDC failed to demonstrate that a valid contract is in place. <><><><><> DR2: SCSDC was afforded opportunities to justify the selection of ENA's bid proposal of \$9,336,396, which is over \$3 million more than AT&T's \$6,053,804.04 bid, as the most cost-effective solution. SCSDC stated that AT&T's bid had defects which had the cumulative effect of offsetting the value of a lower sticker price. SCSDC acknowledged that the price differential is significant but indicated ENA's service offering was unique and not comparable to AT&T. SCSDC also stated AT&T's bid excluded installation charges. A thorough review of each proposal shows that the services offered are similar. As a result, the circumstances presented do not justify the selection of ENA and it has been determined that SCSDC failed to adhere to the requirements of selecting the most cost-effective solution.

FCDL Date: 03/01/2016

Wave Number: 077

Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2017

Consultant Name: Kim Friends

Consultant Registration Number (CRN): 16043564

Consultant Employer: CSM, Inc.

FUNDING COMMITMENT REPORT
Service Provider Name: ENA Services, LLC
SPIN: 143030857
Funding Year: 2015

Name of Billed Entity: SHELBY COUNTY SCHOOL DISTRICT
Billed Entity Address: 160 S HOLLYWOOD AVE
Billed Entity City: MEMPHIS
Billed Entity State: TN
Billed Entity Zip Code: 38112-4801
Billed Entity Number: 128440
Contact Person's Name: Rosy Campos
Preferred Mode of Contact: EMAIL
Contact Information: rcampos@csmcentral.com
FCC Form 471 Application Number: 998054
Funding Request Number: 2795609
Funding Status: Not Funded
Service Type: Voice Services
FCC Form 470 Application Number: 283390001111946
Contract Number: N/A
Billing Account Number: N/A
Service Start Date: 07/01/2015
Contract Expiration Date: 06/30/2016
Number of Months Recurring Service Provided in Funding Year: 12
Annual Pre-Discount Amount for Eligible Recurring Charges: \$3,382,074.24
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$.00
Pre-Discount Amount: \$3,382,074.24
Applicant's Discount Percentage Approved by SLD: 70%
Funding Commitment Decision: \$.00 - Contract Violation
Funding Commitment Decision Explanation: DR1: This FRN is denied because you failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium (SCSDC) and ENA Services, LLC (ENA). The SCSDC provided a contract between Metropolitan Nashville Public Schools (MNPS) and ENA (Contract # 2-225071-00) that was signed and executed March 7, 2011. In their response, the SCSDC stated that the ENA costs proposed to the SCSDC were lower than the costs proposed in the previous consortium procurement with MNPS. SCSDC selected MNPS pricing instead of executing a contract with ENA. SCSDC has not demonstrated that there was a contract executed between SCSDC and ENA. Furthermore, there is no provision in the MNPS contract, or underlying RFP, that allows for the SCSDC to piggy-back onto that contract. In response to our Intent to Deny letter, SCSDC cited Tennessee Code Section 12-3-1203(b)(1)-(2) to support that a valid contract exists. Since this statute is limited to the purchase of equipment, the MNPS contract falls outside of the Tennessee Code parameters. Additionally, the dollar amount exceeds the statutory threshold. Accordingly, SCSDC failed to demonstrate that a valid contract is in place. <><><><><> DR2: SCSDC was afforded opportunities to justify the selection of ENA's bid proposal of \$9,336,396, which is over \$3 million more than AT&Ts \$6,053,804.04 bid, as the most cost-effective solution. SCSDC stated that AT&Ts bid had defects which had the cumulative effect of offsetting the value of a lower sticker price. SCSDC acknowledged that the price differential is significant but indicated ENA's service offering was unique and not comparable to AT&T. SCSDC also stated AT&Ts bid excluded installation charges. A thorough review of each proposal shows that the services offered are similar. As a result, the circumstances presented do not justify the selection of ENA and it has been determined that SCSDC failed to adhere to the requirements of selecting the most cost-effective solution.

FCDL Date: 03/11/2016
Wave Number: 040
Last Allowable Date for Delivery and Installation for Non-Recurring Services: 09/30/2017

Consultant Name: Rosy Campos
Consultant Registration Number (CRN): 16043564
Consultant Employer: CSM CENTRAL

Exhibit 2
Appeal Denial Letters



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2015-2016

August 26, 2016

Robert Patterson
Bradley Arant Boult Cummings LLP
1600 Division Street, Suite 700
Nashville, TN 37203

Re: Applicant Name: SHELBY COUNTY SCHOOL DISTRICT
Billed Entity Number: 128440
Form 471 Application Number: 998054
Funding Request Number(s): 2795609
Your Correspondence Dated: April 29, 2016

After review of the information and documentation provided, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's funding commitment decision for the FCC Form 471 Application Number and funding requests number(s) (FRN(s)) referenced above. This letter provides an explanation for USAC's decision. The date of this letter also begins the sixty (60) day time period for appealing this decision. If your Letter of Appeal included more than one FCC Form 471 Application Number, please note that you will receive a separate decision for each funding application.

Funding Request Number(s): 2795609
Decision on Appeal: **Denied**
Explanation:

- During the appeal review of your FCC Form 471# 998054 you requested reversal of the denial. You failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium (SCSDC) and ENA Services, LLC (ENA). The SCSDC provided a contract between Metropolitan Nashville Public Schools (MNPS) and ENA (Contract # 2-225071-00) that was signed and executed March 7, 2011. SCSDC selected MNPS pricing instead of executing a contract with ENA. SCSDC has not demonstrated that there was a contract executed between SCSDC and ENA. Furthermore, there is no provision in the MNPS contract, or underlying RFP, that allows for the SCSDC to piggy-back onto that contract. Additionally, the dollar amount exceeds the statutory threshold. SCSDC was afforded opportunities to justify the selection of ENA's bid proposal of \$9,336,396.00, which is over \$3 million more than AT&Ts

\$6,053,804.04 bid, as the most cost-effective solution. Accordingly, SCSDC failed to demonstrate that a valid contract is in place. As a result, the circumstances presented do not justify the selection of ENA and it has been determined that SCSDC failed to adhere to the requirements of selecting the most cost-effective solution. Consequently, your appeal is denied.

- USAC has determined, that at the time you submitted your FCC Form 471 application, you did not have a contract or a legally binding agreement with your service provider(s), which met your state and local or the FCC's definition of a contract or a legally binding agreement. *See* 47 C.F.R. sec. 54.504(a). Except for services to be delivered under non-contracted tariff or month-to-month arrangements, FCC rules require that applicants submit a completed FCC Form 471 "upon entering into a signed contract or other legally binding agreement for eligible services." The existence of a written offer from the service provider containing all the material terms and conditions and a written acceptance of that offer is considered evidence of the existence of a legally binding agreement. In addition, after a commitment of funding, an applicant's receipt of services consistent with the offer and with the applicant's request for E-rate support will also constitute evidence of the existence of a sufficient offer and acceptance. *See* In the Matter of Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99 para. 204 (rel. Jul. 23, 2014). The services you requested are not non-contracted tariff or month-to-month services and you did not demonstrate that there is a contract or a legally binding agreement in place for those services. In your appeal, you did not demonstrate that USAC's decision was incorrect. As USAC does not have authority to waive the FCC rules of the program, your appeal is denied.

If you wish to appeal this decision, you may file an appeal pursuant to 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at:
<http://www.usac.org/sl/about/program-integrity/appeals.aspx>.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2013-2014

August 26, 2016

Robert Patterson
Bradley Arant Boult Cummings LLP
1600 Division St., Suite 700
Nashville, TN 37203

Re: Applicant Name:	SHELBY COUNTY SCHOOL DISTRICT
Billed Entity Number:	128440
Form 471 Application Number:	909203
Funding Request Number(s):	2498802
Your Correspondence Dated:	April 29, 2016

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2013 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2498802
Decision on Appeal: **Denied**
Explanation:

- During the appeal review of your FCC Form 471# 909203 you requested reversal of the denial. You failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium (SCSDC) and ENA Services, LLC (ENA). The SCSDC provided a contract between Metropolitan Nashville Public Schools (MNPS) and ENA (Contract # 2-225071-00) that was signed and executed March 7, 2011. SCSDC selected MNPS pricing instead of executing a contract with ENA. SCSDC has not demonstrated that there was a contract executed between SCSDC and ENA. Furthermore, there is no provision in the MNPS contract, or underlying RFP, that allows for the SCSDC to piggy-back onto that contract. Additionally, the dollar amount exceeds the statutory threshold. SCSDC was afforded opportunities to justify the selection of ENA's bid proposal of \$9,336,396, which is over \$3 million more than AT&Ts \$6,053,804.04 bid, as the most cost-effective solution. Accordingly, SCSDC failed to

demonstrate that a valid contract is in place. As a result, the circumstances presented do not justify the selection of ENA and it has been determined that SCSDC failed to adhere to the requirements of selecting the most cost-effective solution. Consequently, your appeal is denied.

- USAC has determined, that at the time you submitted your FCC Form 471 application, you did not have a contract with your service provider(s), which met your state and local or the FCC's definition of a contract. Except for services to be delivered under non-contracted tariff or month-to-month arrangements, FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." The services you requested are not non-contracted tariff or month-to-month services. *See* 47 C.F.R. sec. 54.504(a). In your appeal, you did not demonstrate that USAC's decision was incorrect. As USAC does not have authority to waive the FCC rules of the program, your appeal is denied.

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2013-2014

August 26, 2016

Robert Patterson
Bradley Arant Boult Cummings LLP
1600 Division St. Suite 700
Nashville, TN 37203

Re: Applicant Name: SHELBY COUNTY SCHOOL DISTRICT
Billed Entity Number: 128440
Form 471 Application Number: 909564
Funding Request Number(s): 2498932
Your Correspondence Dated: April 29, 2016

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2013 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2498932
Decision on Appeal: **Denied**
Explanation:

- During the appeal review of your FCC Form 471# 909564 you requested reversal of the denial. You failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium (SCSDC) and ENA Services, LLC (ENA). The SCSDC provided a contract between Metropolitan Nashville Public Schools (MNPS) and ENA (Contract # 2-225071-00) that was signed and executed March 7, 2011. SCSDC selected MNPS pricing instead of executing a contract with ENA. SCSDC has not demonstrated that there was a contract executed between SCSDC and ENA. Furthermore, there is no provision in the MNPS contract, or underlying RFP, that allows for the SCSDC to piggy-back onto that contract. Additionally, the dollar amount exceeds the statutory threshold. SCSDC was afforded opportunities to justify the selection of ENA's bid proposal of \$9,336,396, which is over \$3 million more than AT&Ts \$6,053,804.04 bid, as the most cost-effective solution. Accordingly, SCSDC failed to

demonstrate that a valid contract is in place. As a result, the circumstances presented do not justify the selection of ENA and it has been determined that SCSDC failed to adhere to the requirements of selecting the most cost-effective solution. Consequently, your appeal is denied.

- USAC has determined, that at the time you submitted your FCC Form 471 application, you did not have a contract with your service provider(s), which met your state and local or the FCC's definition of a contract. Except for services to be delivered under non-contracted tariff or month-to-month arrangements, FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." The services you requested are not non-contracted tariff or month-to-month services. See 47 C.F.R. sec. 54.504(a). In your appeal, you did not demonstrate that USAC's decision was incorrect. As USAC does not have authority to waive the FCC rules of the program, your appeal is denied.

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2013-2014

August 26, 2016

Robert Patterson
Bradley Arant Boult Cummings LLP
1600 Division Street, Suite 700
Nashville, TN 37203

Re: Applicant Name: SHELBY COUNTY SCHOOL DISTRICT
Billed Entity Number: 128440
Form 471 Application Number: 909724
Funding Request Number(s): 2477430
Your Correspondence Dated: April 29, 2016

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2013 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2477430
Decision on Appeal: **Denied**
Explanation:

- During the appeal review of your FCC Form 471# 909724 you requested reversal of the denial. You failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium (SCSDC) and ENA Services, LLC (ENA). The SCSDC provided a contract between Metropolitan Nashville Public Schools (MNPS) and ENA (Contract # 2-225071-00) that was signed and executed March 7, 2011. SCSDC selected MNPS pricing instead of executing a contract with ENA. SCSDC has not demonstrated that there was a contract executed between SCSDC and ENA. Furthermore, there is no provision in the MNPS contract, or underlying RFP, that allows for the SCSDC to piggy-back onto that contract. Additionally, the dollar amount exceeds the statutory threshold. SCSDC was afforded opportunities to justify the selection of ENA's bid proposal of \$9,336,396, which is over \$3 million more than AT&T's \$6,053,804.04 bid, as the most cost-effective solution. Accordingly, SCSDC failed to

demonstrate that a valid contract is in place. ~~As a~~ result, the circumstances presented do not justify the selection of ENA and it has been determined that SCSDC failed to adhere to the requirements of selecting the most cost-effective solution. Consequently, your appeal is denied.

- USAC has determined, that at the time you submitted your FCC Form 471 application, you did not have a contract with your service provider(s), which met your state and local or the FCC's definition of a contract. Except for services to be delivered under non-contracted tariff or month-to-month arrangements, FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." The services you requested are not non-contracted tariff or month-to-month services. *See* 47 C.F.R. sec. 54.504(a). In your appeal, you did not demonstrate that USAC's decision was incorrect. As USAC does not have authority to waive the FCC rules of the program, your appeal is denied.

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2014-2015

August 26, 2016

Robert Patterson
Bradley Arant Boult Cummings LLP
1600 Division Street, Suite 700
Nashville, TN 37203

Re: Applicant Name: SHELBY COUNTY SCHOOL DISTRICT
Billed Entity Number: 128440
Form 471 Application Number: 950332
Funding Request Number(s): 2705618
Your Correspondence Dated: April 29, 2016

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2014 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 2705618
Decision on Appeal: **Denied**
Explanation:

- During the appeal review of your FCC Form 471# 950332 you requested reversal of the denial. You failed to demonstrate that a valid contract exists between Sweetwater City School District Consortium (SCSDC) and ENA Services, LLC (ENA). The SCSDC provided a contract between Metropolitan Nashville Public Schools (MNPS) and ENA (Contract # 2-225071-00) that was signed and executed March 7, 2011. SCSDC selected MNPS pricing instead of executing a contract with ENA. SCSDC has not demonstrated that there was a contract executed between SCSDC and ENA. Furthermore, there is no provision in the MNPS contract, or underlying RFP, that allows for the SCSDC to piggy-back onto that contract. Additionally, the dollar amount exceeds the statutory threshold. SCSDC was afforded opportunities to justify the selection of ENA's bid proposal of \$9,336,396, which is over \$3 million more than AT&T's \$6,053,804.04 bid, as the most cost-effective solution. Accordingly, SCSDC failed to

demonstrate that a valid contract is in place. ~~As a~~ result, the circumstances presented do not justify the selection of ENA and it has been determined that SCSDC failed to adhere to the requirements of selecting the most cost-effective solution. Consequently, your appeal is denied.

- USAC has determined, that at the time you submitted your FCC Form 471 application, you did not have a contract with your service provider(s), which met your state and local or the FCC's definition of a contract. Except for services to be delivered under non-contracted tariff or month-to-month arrangements, FCC rules require that applicants submit a completed FCC Form 471 "upon signing a contract for eligible services." The services you requested are not non-contracted tariff or month-to-month services. *See* 47 C.F.R. sec. 54.504(a). In your appeal, you did not demonstrate that USAC's decision was incorrect. As USAC does not have authority to waive the FCC rules of the program, your appeal is denied.

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company